IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-529, 76-585, 76-594, 76-603

MONTANA POWER COMPANY, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

CONSOLIDATED BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The New Mexico Environmental Improvement Agency prays that writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit requested by peti-

tioner in Case Nos. 76-529, 76-585, 76-594, and 76-603 be denied.*

OPINION BELOW

The opinion of the Court of Appeals is officially reported at 540 F.2d 1114 (1976). It is also set out as Appendix A to the Petition for a Writ of Certiorari in No. 76-529 which was filed by Montana Power Company and fourteen other petitioners.**

QUESTIONS PRESENTED

1. Whether the Environmental Protection Agency (EPA) acted beyond the scope of its authority under the Clean Air Act of 1970 (the Clean Air Act) in promulgating regulations for the prevention of significant deterioration of air quality (PSD Regulation).

2. Whether the procedures followed by EPA in promulgating the regulations complied with the Clean Air Act.

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* This brief is filed in opposition to the positions taken by Montana Power Company, et al., in No. 76-529; American Petroleum Institute, et al., in No. 76-585, Indiana-Kentucky Electric Corporation, et al., in No. 76-594, and Alabama Power Company, et al., in No. 76-603. The State of New Mexico ex rel. New Mexico Environmental Improvement Agency filed a petition for review in No. 75-1370 below on issues other than those objected to herein. Insofar as respondent can determine the parties to the consolidated proceedings below that will also be adverse respondents to the foregoing petitions are the United States Environmental Protection Agency, its Administrator (Russell E. Train), Sierra Club, the Washington Metropolitan Coalition for Clean Air, New Mexico Citizens for Clean Air and Water, Oregon Environmental Council, Sally Rodgers, John Tanton, Suzan L. Moore, Stephen Winter and the State of Nevada.

** Hereafter, the appendices to the petitions in the numbers cited in the caption above are designated as Petition, No. —, App. —.

3. Whether the regulations are arbitrary and capricious on the ground that they are not directly related to specific adverse effects or on the ground that adequate data and modeling techniques do not exist to make them workable.

4. Whether the Clean Air Act, by prohibiting significant deterioration of existing air quality and the regulations violate any constitutional prohibition.

REASONS FOR DENYING THE WRIT

The following reasons deal with the issues presented by the Petitioners as a basis of their request for this Court to consider the lower court's decision. The reasons presented are the basis for the respondents opposition to the petitioners request.

I

EPA Did Not Act Beyond Its Authority in Promulgating The Regulations

The district court in *Sierra Club* v. *Ruckelshaus* (App. A at 1a) ordered the Administrator to "[d]isapprove any portion of a state plan which fails to effectively prevent the significant deterioration of existing air quality in any portion of any state." Since the Administrator under Section 110 of the Clean Air Act is already required to disapprove a plan that does not provide for the "enhancement" of dirty air (Petition, No. 76-529, App. A at 101a), the court order provides another reason for the disapproval of a plan.

Petitioners[1] rely heavily on the decisions of this Court in *Train* v. *NRDC*, 421 U.S. 60 (1975), *Union*

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[1] Petition, No. 76-529 at 27-30; Petition, No. 76-585 at 8-12; Petition, No. 76-594 at 6-11; Petition, No. 76-603 at 11.

Electric Co. v. *EPA*, — U.S. —, 44 U.S.L.W. 5060 (June 25, 1976), and a statement made in *Hancock* v. *Train*, — U.S. —, 44 U.S.L.W. 4765 (1976) to support their contention that the criteria established in Section 110 concerning the reduction of pollution which exceeds the national standards are the only ones which relates to approval of implementation plans by EPA. They further argue that these decisions are inconsistent with the holding in *Sierra Club* v. *Ruckelshaus*, thus implicitly overruling it.[2]

The Court below in considering the decision in *Train* v. *NRDC* based on similar arguments made by Petitioner said:

> Unlike the instant case, *Train* was concerned with air pollution below the national standards, and the question was whether individual variances would prevent the states from achieving the standards within the prescribed time limits. The Supreme Court in *Train* did not consider the issue of non-deterioration, even though the decision below was based in part on *Sierra Club* v. *Ruckelshaus*. Rather than assume, as the industrial petitioners would have us, that *Train* silently overturned the earlier divided affirmance in *Sierra Club*, we find it more reasonable to conclude that the Court did not address the issue, and we reject the argument based on *Train*. Petition, No. 76-529, App. A at A-28.

Also, in reviewing this Court's decision in *Union Electric Co.* v. *EPA*, the lower court said:

> Although the Court stressed the "shall approve" language of Section 110(a)(2), its construction was founded on a concern that the congressional mandate of prompt implementation of pollution control plans not be disserved. The Court was not presented with the distinct question whether the "shall approve" language of Section 110(a)(2) must be read to subvert the concomitant congressional directive that significant deterioration of air cleaner than the national standards be prevented. Thus, despite the emphasis placed on (a) (2) by the opinions in *Train* v. *NRDC* and *Union Electric*, we do not believe the result in the instant case is controlled by either opinion. Petition, No. 76-529, App. A at 29a.

[2] Id.

It should be noted that the lower court in *Union Electric* expressly pointed out that the state "may also be required to assure the nondegration of air quality which exceeds the national standards." *Supra* at 220. This Court made no comment on this statement in its opinion.

The Clean Air Act states a policy of protecting clean air and the congressional testimony of HEW Secretary Finch and Undersecretary Venaman, and the Senate report, as set out in the lower court's opinion (Petition, No. 76-529, App. A at 20, 21), show that the adoption of Section 110 in 1970 did not change that policy. It would indeed be unfortunate if the 1970 Amendments which Congressman Rodgers described as legislation in which Congress "has committed itself in the strongest possible terms to bringing about clean air in America" (116 Cong. Rec. 42522; I Leg Hist. 118) would be construed to allow significant degredation of this nation's clean air.

II

EPA Procedures in Promulgating the Regulations Complied With the Requirements of the Act

Indiana-Kentucky Electric Corp., et al., in Petition, No. 76-594, make two main arguments in challenging the procedures followed by EPA in promulgating the regulations for the prevention of significant deterioration:

1. EPA did not give states an opportunity to revise their implementation plans before the Agency promulgated its own regulations, *id.* at 11, and
2. EPA failed to hold hearings in every state before the promulgation of these regulations, *id.* at 12.

A. The Regulations Are Not Invalid on the Ground That EPA Did Not Give States an Opportunity To Revise Their Implementation Plans

Petitioners rely upon Section 110(a)(2)H of the Act. That section provides for revisions in state implementation plans to be made by the states. Petition, No. 76-529, App. E at 103a.

Section 110(a) in general sets forth procedures for the formulation, revision, submission to EPA and approval or disapproval by EPA of new and revised plans. If a new or revised plan is disapproved by EPA, Section 110(c) provides for the promulgation by EPA of new or revised regulations which add to or replace all or portions of the plan (see Petition, No. 76-529, App. E at 101a through 106a).

The procedures for revisions to the implementation plan are essentially the same as for the development

of the plan. Both involve formulation by the states and changes by the Administrator only if required by the Act. However, they differ in that one relates to the original adoption of a plan meeting the requirements of the Act and the other concurs subsequent revision to an approved plan as are necessary or desirable to assure continued compliance with the Act.

The PSD regulations issued by the Administration relates to the original states implementation plans. The district court in *Sierra Club* v. *Ruckelshaus* ordered the Administrator to disapprove all original states implementation plans if they failed to effectively prevent significant deterioration, App. A at 1a. All state implementation were disapproved by the Administrator on November 9, 1972, insofar as they related to significant deterioration of existing air quality. 37 Fed. Reg. 23826. The present regulations were issued in November 1974 as part of the original state implementation plans, rather than revisions as that term is used in the Act. Section 110(a)(2)(H) and (c)(3) is therefore inapplicable.

Petitioners' argument would require that all additions to or modifications of state plans by EPA resulting from the disapproval of the plans be treated as revisions, invoking the procedures of 110(a)(2)(H) and 110(c)(3). This would render Section 110(c)(2) totally meaningless. That section allows the Administrator to promulgate his own regulations when the state plan does not carry out the substantive requirements of the Act. In contrast, Section 110(c)(3) permits the Administrator to issue regulations if the state has not adequately revised its plan. If any EPA modification of state plans, after their disapproval, is considered as a revision, Section 110(c)(2) has no meaning.

Furthermore, the district court ordered the Administrator and not the states to prepare regulations. There is no mention in the order of notification to the states to make revisions. If the court had intended that the states were to be given an opportunity to revise their implementation plans before EPA acted, it is likely that the court would have provided more than six months time.

Moreover, the regulations represent the minimum requirements necessary to prevent significant deterioration of air quality and does not prevent states from promulgating as strict or stricter regulations.[3]

B. The Regulations Are Not Invalid on the Grounds That EPA Failed To Hold Hearings in Every State Prior To Promulgating the Regulations

The Clean Air Act does not make public hearings mandatory in every state before promulgation of regulations by EPA can become part of all state imple-

[3] The preamble to the PSD regulations proposed on August 27, 1976 states:

> To facilitate development of State plans to implement the general policy set forth in these regulations in the near future the Administrator intends to publish guidelines for the preparation, adoption, and submittal of State Implementation Plant provisions with respect to the prevention of significant deterioration (40 C.F.R. 51). These additional guidelines will provide criteria for submission of State plans to prevent significant deterioration. The State plans need not be identical to the regulations proposed herein, but should be developed to accomodate more appropriately individual conditions and procedures unique to specific State and local areas. States are urged to develop and submit individual plans as revisions to State Implementation Plans as soon as possible. When individual State Implementation Plan revisions are approved as adequate to prevent significant deterioration of air quality, the applicability of the regulations proposed herein will be withdrawn for that State. [39 Fed. Reg. 31000.]

mentation plans. The relevant section of the Act provides:

> If such state held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such state on any proposed regulation.[4]

It is clear that from this provision that EPA must provide an opportunity for a public hearing within the state of a proposed regulation only if the state failed to hold a public hearing before promulgating its implementation plan or revision.

Every state in the country held hearings with regard to its implementation plan by 1972.[5] The hearings in each state constituted a "public hearing associated with regard to such plan * * * ". Therefore, in promulgating the PSD regulations, EPA was not required under Section 110(d) to hold new hearings in each state.

Notwithstanding that hearings were not held in every state prior to this promulgation of the PDS regulations, the procedures followed by EPA went well beyond the informal rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and gave all members of the public and industry adequate opportunity to present their views concerning the proposed regulations. The original proposed regulations were published in the Federal Register on July 16, 1973. 38 Fed. Reg. 18986. EPA also held hearings in

[4] Section 110(c)(1), Petition, No. 76-529, App. E at 196a.

[5] EPA published initial approval or disapproval of all state implementation plans by May 31, 1972. 37 Fed. Reg. 10842.

August and September, 1973 in five different cities across the United States, and solicited comments from specific individuals and groups. 39 Fed. Reg. 31000.

It is clear that the lack of hearings in every state before promulgation of the PSD regulations did not violate the Act or deny the public the right to comment in the proposed regulations.

III

The Regulations Are Not Arbitrary and Capricious

A. The Air Quality Deterioration Increments Are Not Arbitrary and Capricious

Petitioners [6] argue that the Class I and Class II increments are arbitrary and capricious on the ground that the Classes are not directly linked to specific adverse effects.[7]

New Mexico agrees with the position taken by the Sierra Club in Petition, No. 76-617 [8] concerning the Class III increment allowed by the PSD regulation. However, with respect to the other increments, the lack of a direct relationship with harm to health and welfare does not render the regulations unlawful.

The regulations allow for some variance in the level of air quality across the country by defining the maxi-

[6] Petition, No. 76-585 at 21, 22 and Petition, No. 76-603 at 12.

[7] Class III increment under the PSD regulations allows any amount of degradation up to the national standards. 40 CFR, 52(c)(2)(ii).

[8] The Sierra Club Petition pending before this Court is not being opposed in this brief. Rather New Mexico believes the position taken by the Sierra Club in their petition concerning the Class III increment, id. at 9-11, to be correct.

mum amounts of additional pollution which may be considered relatively insignificant.

The court below noted that the term "significant deterioration" was not defined by the district court in *Sierra Club* v. *Ruckelshaus,* but left the definition to the EPA.[9] Nor does the legislative history of the Act or the Act itself define the term. However, the structure of the Act suggests that the meaning of "significant" should not be tied to the secondary standards. The national primary and secondary standards are by definition quantified estimates of measured effects of pollution on health and welfare.[10] Therefore, one goal of EPA in the promulgation of the PSD regulations could be to protect against undetected, unquantified, or unquantifiable effects of air pollution. 38 Fed. Reg. 18987. Rather than guard against undetected or unquantified effects of air pollution, and thus prohibit any increase in pollution, EPA chose another solution. EPA's solution, as stated by the lower court, was:

> [a] definition created by its own implementation; each state's evaluation of the relative importance of the competing interests which surround continued maintenance of air quality will determine what level of deterioration would be significant for that state. The three classifications thus are not intended to represent a scientific conclusion as to what constitutes significant deterioration; rather, they are suggested frameworks for use by the states after independent evaluation. Because the regulations do not purport to be mandatory

[9] Petition, No. 76-529, App. A at 42a.

[10] § 109, 43 U.S.C. § 1857 c-4, Petition, No. 76-529, App. E at 99a. Also see generally Comment, II: *State Implementation Plans and Air Quality Enforcement,* 4 Ecology L.Q. 595, 597-598.

> requirements based on scientific research, they properly cannot be judged by asking whether the increments are related to demonstrated health effects. [Petition, No. 76-529, App. A at 42a].

Petitioners point to no alternative method of defining significant deterioration of air quality other than permitting air to deteriorate to the level of clear, quantifiable harm.

EPA's approach to preventing significant deterioration by establishing the Class I and Class II increments is reasonable and supported by recent Senate and House passed bills (S. 3219 and H. R. 10498, 94th Cong.) as well as a compromise provision.[11]

Thus, the Class I and Class II increments of the PSD regulations appear to set reasonable limits on deterioration of existing clean air.

B. Adequate Data and Modeling Techniques Exist To Implement the Regulations

Petitioners in No. 76-585 at 24, 25, have objected that available modeling techniques are inadequate to predict with precision what effect a proposed new source will have on the ambient air and therefore on the Class designation for its area.

The regulations provide that prevention of significant deterioration in designated clean air areas should be enforced chiefly through the preconstruction review of new and modified sources. 40 C.F.R. 52.21(d). EPA suggests the use of diffusion modeling techniques

[11] The Conference bill failed of passage in both Houses prior to adjournment, *sine die*. See H.R. No. 94-1742 reprinted at 122 Cong. Res. No. 150 (Pt. 2) at H 11959-94 (daily ed.). Specifically H 11970-73, 11987-88.

to predict if a proposed new source will violate the allowable increment for the area and to keep track of the unused increment.

EPA acknowledges that existing techniques for modeling are not entirely accurate but states (39 Fed. Reg. 31003):

> It should also be noted, however, that data obtained from current diffusion modeling techniques, while not corresponding to actual conditions in the ambient air, do provide a consistent and reproducible guide which can be used in comparing the relative impact of a source.

The method of air quality management in Section 110 of the Act depends on the use of some type of model for relating emissions to air quality.[12]

In *Texas* v. *EPA*, 499 F.2d 289 (1974), the Court of Appeals for the Fifth Circuit, in considering EPA's reliance on atmospheric models, said:

> In the absence of sophisticated information, the EPA has been forced to rely on crude assumptions. We cannot object, for it is not our role to judge whether the EPA's projections are accurate, but only whether they represent arbitrary or capricious exercises of its authority. Necessity, which has mothered the EPA's invention of this model, also protects it from a judicial insistence on greater reliability. Decisions which are not arbitrary and capricious in the light of existing knowledge may become so by dint of scientific advance. By its use of estimations and sparce data, the EPA

[12] § 110(a)(2)D and 110(a)4, Petition, No. 76-529 at 102a, 104a. These sections require that state implication plans include a preconstruction review procedure similar to that required in the PSD regulations.

> creates a continuing responsibility to develop, review and apply updated and more sophisticated information.

It is clear that should model inaccuracy be the basis for invalidating the PSD regulations the control of air pollution through modeling techniques, as employed under § 110 of the Clean Air Act, may be endangered.

IV

The Clean Air Act and the PSD Regulations Are Not Unconstitutional

A. The Act And The Regulations Are Within The Powers Granted Under The Commerce Clause

Petitioners in No. 76-585 at 17, 18 argue that under the Commerce Clause the Congress has no authority to require prevention of significant deterioration of existing air quality.

This Court has repeatedly recognized this broad sweep of the power Congress has over commerce.[13] In addition, several circuit courts have found that air pollution has an effect upon commerce and therefore can be regulated by Congress.[14]

Both Congress and the courts have recognized that air pollution recognizes no boundaries and is by definition a part of interstate commerce.[15] Given that air pollution control is within the commerce power of Congress, control of air pollution via PSD regulations would similarly be within power.

[13] *Gibbons* v. *Ogden*, 9 Wheat 1, 196 (1824); *North America Co.* v. *Securities and Exchange Comm.*, 327 U.S. 686, 705 (1945); *Heart of Atlanta Motel* v. *U.S.*, 399 U.S. 241, 255 (1964); *Maryland* v. *Wirtz*, 392 U.S. 183, 190 (1968).

[14] *Pennsylvania* v. *EPA*, 500 F.2d 246, 259 (C.A. 3, 1974); *Accord South Terminal Corp.* v. *EPA*, 504 F.2d 646, 677 (C.A. 1, 1974); *District of Columbia* v. *Train*, — F.2d —, — (C.A.D.C., 1975).

B. The Act And The Regulations Do Not Violate The Fifth Amendment

Petitioners in No. 76-585 at 23, 24, argue that the Act and regulations violate substantive due process because they bear no relationship to the protection of health and welfare.

This Court has repeatedly held that if the laws are not arbitrary and bear a reasonable relationship to a proper legislative purpose then the requirements of due process are not violated.[16]

Section 101(b) provides that the purpose of the Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Petition, No. 76-529, App. E at 97a.

There are harms to the public health and welfare at air quality levels below the secondary standards which are impossible to quantify.[17]

[15] § 101(a)(2) of the Act, Petition, No. 76-529, App. E at 97a; *South Terminal Corp.* v. *EPA*, *supra*, 504 F.2d at 667; *United States* v. *Bishop Processing Co.*, 287 F. Supp. 624, 629 (D. Md. 1968), affirmed 423 F.2d 469 (C.A. 4), Certiorari denied, 398 U.S. 904 (1970).

[16] *Nebbia* v. *New York*, 291 U.S. 502, 537 (1934); *West Coast Hotel* v. *Parrish*, 300 U.S. 379, 391 (1939); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 253-259.

[17] EPA has stated that:

> Limitations on air quality that result in cleaner air than the national ambient air quality standards cannot • • • be

Congress, consistant with the due process clause of the Fifth Amendment, can properly prohibit significant deterioration of existing clean air even though existing scientific information does not establish the pollution levels below the national standards that might harm the public. Such a decision, to prevent unknown but possible harm, surely bears a reasonable relationship to a proper legislative purpose.

C. The Act And Regulations Do Not Violate The Tenth Amendment

Petitioners Nos. 76-585 at 15 and 76-603 at 11 argue that the Act, if it authorizes the PSD regulations, violates the Tenth Amendment by assuming the right of the states to regulate land use. This Court in *United States* v. *Darby,* 312 U.S. 100, 114 (1940), has made it clear that any activity within the state police power does not preclude regulations at the federal level based on the commerce clause.[18]

The Court of Appeals for the Ninth Circuit recently held in *Brown* v. *EPA*, 521 F.2d 527, 538 (1975), certiorari granted, — U.S. —, (1976), that Congress has in the Clean Air Act exercised its power

based on any quantitative measure of harm to either public health or welfare. This is not, however, to say that there are no possible unquantified adverse effects on public health or welfare below the levels of the national standards. Examples of such unquantified effects involve the transformation of sulfur dioxide into suspended sulfates and sulfuric acid aerosols, resulting in possible effects on health, visibility, climatic changes, acidity of rain, and deterioration of materials. *Technical Support Document—EPA Regulations for Preventing the Significant Deterioration of Air Quality, U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards* (January 1975), at 6.

[18] Also see discussion under IV A above.

under the commerce clause to exclude state regulation of interstate commerce.

> [T]he State's exercise of its police power must not improperly burden interstate commerce * * *. With this proposition no one differs * * *. [I]n the area of control of air pollution federal law has preempted state law * * *.

Moreover the prohibition against significant deterioration of air quality in the statute and regulations has no greater effect on land use than other restrictions imposed by the Act. Thus, the petitioners arguments constitute an attack upon the constitutionality of the entire Act.

Peitioners in No. 76-585 at 17, 18 also argue that the regulations violate the Tenth Amendment by requiring the States to implement and enforce the PSD regulations. Neither the statute nor the regulations force the states to do anything to enforce the regulations. The states are given the opportunity to assume the responsibility for the implementation and enforcement of the regulations, but in no way are compeled to do so.[19]

D. Authority to Promulgate The PSD Regulations Is Not An Unconstitutional Delegation of Legislative Authority

Petitioners in Nos. 76-585 at 12 and 76-603 at 11 argue that Congress has unconstitutionally delegated

[19] Several Courts of Appeals have held that regulations that compel the States to take affirmative action to carry out the Clean Air Act are unconstitutional. *Brown* v. *EPA,* 521 F.2d *supra* at 838; *District of Columbia* v. *Train,* 521 F.2d 971 (C.A.D.C. 1975), certiorari granted — U.S. — (1976); *Maryland* v. *EPA,* 530 F.2d 215 (C.A. 4, 1975), certiorari granted, — U.S. — (1976). However, none of these decisions support the position that the PSD regulations violate the Tenth Amendment.

legislative authority to EPA by failing to set forth adequate criteria under which EPA prevent significant deterioration of existing clean air.

The delegation by Congress to EPA to prevent significant deterioration of existing clean air is not unconstitutional. Such delegation falls within the limits set by this Court in *Lichter* v. *United States,* 334 U.S. 742, 785 (1948):

> It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program. If Congress shall lay down by legislative act and intelligible principle * * * such legislative action is not a forbidden delegation of legislative power.

Petitioners cite *National Cable Television Association* v. *United States,* 415 U.S. 336, 342 (1974); *Panama Refining Co.* v. *Ryan,* 293 U.S. 388 (1935) and A.L.A. *Scheichter Poutry Corp.* v. *United States,* 295 U.S. 495 (1935) as authority for their contentions. However, other decision by this Court have allowed Congress wide latitude in delegating its powers.[20]

With regard to the Clean Air Act, the First Circuit Court of Appeals in *South Terminal Corp.* v. *EPA,* 504 F.2d 646, 676 (1974) pointed out that "The [Clean Air] Act leaves considerable flexibility to EPA in the

[20] Legislative criteria that have been described by this Court as adequate standards in delegating its powers are: the direction to do what is "necessary" to carry out the agency's functions, *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 180-181 (1968); and "just and reasonable" rates, *Permian Basin Rate Cases,* 390 U.S. 747 (1968).

choice of means. Yet there are benchmarks to guide the Agency and the courts in determining whether or not EPA is exceeding its powers * * *."

It appears that Congress has within the Clean Air Act set out a clear policy by which EPA must conform in promulgating the preventing of significant deterioration regulations.

CONCLUSION

For the foregoing reasons, respondent respectfully submit that Petitions for a Writ of Certiorari Nos. 76-529, 76-585, 76-594, and 76-603 should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

SIERRA CLUB, *et al., Plaintiffs,*

v.

RUCKELSHAUS, *Defendant.*

CIVIL ACTION NUMBER 1031-72

Preliminary Injunction

(FILED MAY 30, 1972)

It appearing to the Court that a Preliminary Injunction pending hearing and determination of plaintiffs' request for a permanent injunction and other relief should be issued because, unless defendant is enjoined from approving portions of state implementation plans permitting significant deterioration of air quality, plaintiffs may suffer immediate and irreparable injury, loss and damage before the determination of this case on the merits,

NOW THEREFORE, IT IS ORDERED, that defendant, his agents, officers, servants, employees, and attorneys, and any persons in active concert or participation with him, be and they are, hereby enjoined until plaintiffs' request for a permanent injunction and other relief has been determined by this Court from, directly or indirectly, approving any state implementation plan under 42 U.S.C. 1857c-5 unless he approves the state plan subject to subsequent review by him to insure that it does not permit significant deterioration of existing air quality in any portion of any state where the existing air quality is better than one or more of the secondary standards promulgated by the Administrator. The Administrator shall complete this review of all the state plans within four months of this order. The Administrator, shall within this four-month period, approve any portion of a state plan which effectively prevents the significant deterioration of existing

air quality in any portion of any state, and disapprove any portion of a state plan which fails to effectively prevent the significant deterioration of existing air quality in any portion of any state.

The Administrator shall prepare and publish proposed regulations, pursuant to 42 U.S.C. 1857c-5 (c) as to any state plan which he finds, on the basis of his review, either permits the significant deterioration of existing air quality in any portion of any state or fails to take the measures necessary to prevent such significant deterioration. Such regulations shall be promulgated within six months of this order.

This order shall be stayed until 9:00 a.m., May 31st, 1972.

/s/ ILLEGIBLE
District Judge

Date: 30 May 1972